MONTANA LEGISLATIVE HISTORY

Chapter 142 1995

Bill H 384 S _____ Original bill & history ____C

H. Committee on Labor & Employment Relations			S. Committee on Education		
Hearing Date(s)	Feb 10	✓ C	Hearing Date(s)	Mar 09	✓ C
	_____	____C		Mar 10	✓ C
	_____	____C		_____	____C
	_____	____C		_____	____C
Date Out	Feb 10	✓ C		Mar 10	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LC 1156

INTRODUCED BY House BILL NO. 384

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION 75-6105.1, R.C.M. 1947, TO PROVIDE UPON REQUEST A STATEMENT OF REASONS AND HEARING BEFORE THE TRUSTEES ON TERMINATION OF EMPLOYMENT OF A PUBLIC SCHOOL TEACHER."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-6105.1, R.C.M. 1947, is amended to read as follows:

"75-6105.1. Notification of nontenure teacher re-election. (1) The trustees shall provide written notice to all nontenure teachers who have been re-elected by the first day of April. Any nontenure teacher who does not receive notice of re-election or termination shall be automatically re-elected for the ensuing school fiscal year. Any nontenure teacher who receives notification of his re-election for the ensuing school fiscal year shall provide the trustees with his written acceptance of the conditions of such re-election within twenty (20) days after the receipt of the notice of re-election. Failure to so notify the trustees within twenty (20) days may be considered nonacceptance of the tendered position. The provisions of this section shall not apply to cases in which a nontenure teacher is terminated when the financial condition of the school district requires a reduction in the number of teachers employed and the reason for the termination is to reduce the number of teachers employed.

(2) When the trustees notify a nontenure teacher of termination, the teacher may within ten (10) days after receipt of such notice make written request of the trustees for a statement in writing of the reasons for termination of employment. Within ten (10) days after receipt of the request the trustees shall furnish such statement to the teacher."

-End-

MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS
HOUSE OF REPRESENTATIVES
February 10, 1975

A meeting of the Labor & Employment Relations Committee was held on Monday, February 10, 1975 at 10:30 a.m. in Room 108 of the Capitol Building with Chairman Kimble presiding. All members present.

The following bills were heard in this order: HB 548
HB 348
HB 418
HB 514

HB 548--SPONSOR: Gary Kimble, district 83, requested to hold this bill in committee as he wanted to make sure the change would be substansive.

HB 348--Scully, district 87, said this bill would require the administrator to give a young teacher reason for their dismissal. This does not pertain to tenure or non-tenure, nor does it grant or afford appeal for court procedures. All this does is give the dismissed teacher justification for their dismissal.

Proponent Maurice Hickey, Montana Education Association, said that during the first three years of teaching, many teachers feel that they are doing everything right, and it would only behoove the school board to tell them why they were dismissed so that they may correct them. He said that some teachers were dismissed because they belonged to the wrong church.

Opponent Wallace Edland, Montana School Board, said that the first three years are testing years for the teacher and that the school board should be free to let one go to hire a better teacher. He further stated that after ten days, upon written request, they may appeal before the board or may go direct to court, of which 90% of the cases will appeal in court. This would be destroying the probationary period theory.

In closing, Scully said this would not give instant tenure, but would give rational to the teacher. If the three years is a testing time, then they should give the teacher their scores of what they are doing. Federico asked if they thought it should be left unwritten, and Mr. Hickey replied that it does belong in the records if it has to do with the employment. Guthrie commented that as an administrator, he has never refused a second contract, so as to help bring them up to where they should be. He said that it was the fault of the administrator in not directing the teacher, and that personalities and the administration are the one that contribute to failure. An administrator's job is to make good teachers, not to fire them. Sivertsen was concerned with the reputation of the teacher, and Scully said that the written notice is not furnished to the press or anyone, except the teacher. Gilligan commented that not everyone can teach.

ELLERD MOVED HB 220 DO NOT PASS, SECONDED BY BABCOCK. BAETH MOVED A SUBSTITUTE MOTION THAT HB 220 DO PASS, SECONDED BY FEDERICO. Sivertsen said that the 180 days would mean that the employee would only be working half the year, and would be discriminatory to the employer. He felt that the working man should make their arrangements and scrifices to serve in public office. MOTION CARRIED WITH ALL IN FAVOR EXCEPT BABCOCK, SIVERTSEN, ELLERD OPPOSED, AND GUTHRIE ABSTAINING.

GUTHRIE MOVED TO RETRACT THE MOTION, AND TO AMEND HB 220 BY STRIKING SECTION 2, AND INSERTING NEW WORDING AS TO CHARGE THE COMPENSATION TO THE GENERAL FUND, SECONDED BY MAGONE. MOTION CARRIED WITH ALL IN FAVOR EXCEPT DASSINGER, ELLERD, TRAVIS AND McFADDEN OPPOSED.

KELLY MOVED HB 220 AS AMENDED TO PASS, SECONDED BY GILLIGAN. MOTION CARRIED WITH ALL IN FAVOR EXCEPT BABCOCK, ELLERD, BAETH, McFADDEN OPPOSED.

HB 384--FEDERICO MOVED AMENDMENT DO PASS, SECONDED BY GILLIGAN. MOTION CARRIED BY ALL.

FEDERICO MOVED AS AMENDED DO PASS, McFADDEN SECONDED THE MOTION. MOTION CARRIED BY ALL.

HB 418--FEDERICO MOVED AS AMENDED DO PASS, SECONDED BY GILLIGAN. MOTION CARRIED BY ALL.

HB 514--FEDERICO MOVED DO PASS, SECONDED BY ELLERD. MOTION CARRIED BY ALL.

There being no further business the committee meeting was adjourned to reconvene on February 12, 1975.

Gary N. Kimble

GARY N. KIMBLE, CHAIRMAN

Gloria T. Wong

Gloria T. Wong, Secretary

MINUTES OF THE MEETING
EDUCATION COMMITTEE
MONTANA STATE SENATE

March 7, 1975

The twenty-sixth meeting of the Education Committee was called to order by Senator Chet Blaylock, Chairman, on the above date in Room 402 of the State Capitol Building at 11:00 a.m.

ROLL CALL: All members were present.

FURTHER CONSIDERATION OF HOUSE BILL 301: Chairman Blaylock said this bill had been recommended BE NOT CONCURRED IN on March 5, 1975 but Representative Lynch asked that the bill be discussed further because he felt the figures by the actuary were not correct. He asked for the feelings of the committee. Senator Fasbender moved the committee reconsider their action on HB 301 so more testimony could be presented. The motion carried with Senators Dunkle, Nelson and Warden opposed and Senators Boylan, Colberg and McCallum absent.

CONSIDERATION OF HOUSE BILL 384: Provide upon request a statement of reasons on termination of employment of a public school teacher.

Representative Scully, sponsor, said the bill speaks to the problem regarding non-tenure teachers. He said the teacher should be made aware of the job he is doing. If he is not doing a good job, he should know the reasons for his dismissal. He added the bill would force schools to have constant supervision of young teachers and make valid comments and criticism to that teacher.

Proponents of the bill included:

Mr. Maurice Hickey, Montana Education Association. He stated his support of the bill. He said if there are basic reasons why a teacher should not be returned to their job, they should be made aware of this.

Mr. Jim McGarvey, Montana Federation of Teachers. He asked the committee to support HB 384. He said that too often teachers are terminated without really knowing why they are terminated.

Ms. Dolores Colburg, Superintendent of Public Instruction. She stated her support of the bill and added that people should have the right to know why they are discharged.

Opponents of the bill included:

Mr. Chad Smith, Montana School Boards Association. He said HB 384 is a dangerous bill because the result of the bill is to provide tenure protection for non-tenure reachers. A copy of Mr. Smith's testimony is appended to the minutes.

Representative Scully, in closing, said this is the first time this bill has been introduced. He added that regarding cases that have been decided, the entire cases should be read. No judge would say that it is necessary to give reasons to a teacher when they are dismissed. Teachers should be given rationale.

When questioned by the committee, Dolores Colburg said a teacher has the right to know his evaluation.

After considerable questions by the committee, the Chair closed testimony on HB 384.

CONSIDERATION OF HOUSE BILL 308: Authorize the Board of Public Education to specify and define the basic instructional programs in public schools.

Representative Guthrie, sponsor, said the bill will return power to determine curriculum to State Board of Education and State Department of Education, which will return it to local districts. He said the bill will not change mandated curriculum. The bill has no impact on postsecondary education, and it does not change any bill passed regarding Indian culture.

Proponents of the bill included:

Ms. Dolores Colburg, Superintendent of Public Instruction. She distributed to the committee a copy of her testimony and a copy of testimony of the Board of Public Education, which are attached to the minutes.

Mr. Maurice Hickey said curriculum should be left in the hands of the State Board of Public Education. It gives flexibility at the local level to discuss attitudes.

Mrs. Frances Satterthwaite, Inter-tribal Policy Board. She stated her support of the bill and said it does not affect Indian legislation.

Mr. G. V. Erickson, Montana Association of School Administrators. He stated his support of the bill. He said the power is being put back to the Board of Public Education where it should be.

Mr. Wallace Edland, Montana School Boards Association. He stated his support of the bill. He said it gives back to the local people the power that they should have.

There was no opposition to the bill.

After questions by the committee, the Chair closed testimony on this bill.

CONSIDERATION OF HOUSE BILL 355: Education of children in need of special education outside of the district of residence, allowing the board of trustees of the district of residence to arrange the attendance of a child in need of special education in another district without payment of tuition, providing that the tuition for education out of Montana shall be included in the maximum-budget-without-a-vote for special education.

Representative Dussault, sponsor, said the bill was submitted at the request of the Superintendent of Public Instruction's Office to clarify what is presently a conflict in the statutes relating to tuition for special education students. She said funding for special

MEMORANDUM ON H.B. #384

The result of this bill is to provide non-tenure teachers with the opportunity for Court review of the reasons for non-renewal of contract. Under Montana law (Section 75-6103, R.C.M., 1947), it is provided that a teacher attains tenure status when he or she enters into the fourth consecutive annual employment contract. Until such time, the teacher has no tenure protection and the School District has the opportunity to observe the teacher and determine whether he or she is the best individual that the district can obtain for the money available. After tenure is obtained, a teacher can only be dismissed for cause, and the teacher may demand and receive reasons for termination and a hearing before the board of trustees. The teacher may thereafter appeal all the way to the Montana Supreme Court, or possibly even into the Federal Courts. Hearing and appeal is not required for non-tenure teachers and for good reason, as stated by Russell E. Smith, U. S. District Judge, District of Montana, in Cookson vs. Lewistown School District No. 1, decided July 19, 1972 and affirmed December 20, 1972 (No. 3062, Great Falls Division). In the Cookson case, Judge Smith pointed out:

> "These three years are the testing years during which not only may the teacher's merits be weighed but the school's need for a particular teacher assessed. It may be, and perhaps this reasoning underlies the Montana policy, that in the interests of creating a superior teaching staff a school board should be free during a testing period to let a teacher's contract expire without a hearing, without any cause personal to the teacher, and for no reason other than that the board rightly or wrongly believes that ultimately it may be able to hire a better teacher."

H.B. #384 states that within ten days after receipt of notice of non-renewal of contract, the non-tenure teacher may request a statement in writing of the reasons for termination of employment and the trustees must furnish the same within ten days after the request. This means, in effect, that the trustees must justify their action. If the non-tenure teacher is unsatisfied with the reasons stated, he or she may seek judicial review, contending that

the board's decision was arbitrary, capricious, unreasonable or an abuse of discretion, and may go immediately to court without exhausting any other administrative remedy because no other administrative remedy is provided in the statute. In other words, the non-tenure teacher can seek judicial relief quicker and more effectively than can the tenure teacher, because the tenure teacher must first appeal to the County Superintendent of Schools and the State Superintendent of Public Instruction and the result is that the three-year probationary period is destroyed.

The proponents of the bill may argue that federal constitutional law requires that reasons for termination be given to non-tenure teachers, but this is not true. Federal District Judge Russell E. Smith reviewed the most recent decision on this point rendered by the U. S. Supreme Court, being Board of Regents vs. Roth, decided June 29, 1972 (40 U.S.L.W.5079) and found that school districts in Montana are not required to give reasons for non-renewal to non-tenure teachers. The Roth case ruled that neither rights of property or liberty are involved in such non-renewal. Judge Smith did, however, observe that if a School District does give notice of reasons that reflect upon the teacher's reputation and good name, then it must grant a hearing under the due process provisions of the United States Constitution, as decided in the Roth case, because everyone has the right to defend against charges that are damaging. In other words, once again the Court was saying if school boards give reasons for non-renewal of a non-tenure teacher, they can be called upon in Court to prove the sufficiency of such reasons.

This bill would destroy the teacher selection system and would seriously deteriorate the calibre of public school teaching staffs as the years progress. The continual strife between teachers and school trustees in the struggle for management of the school district should not be allowed to reduce the quality of education offered to Montana's children. The children are often the forgotten individuals in the battle.

Respectfully submitted,

CHADWICK H. SMITH, Licensed Lobbyist

MONTANA SCHOOL BOARDS ASSOCIATION
1400 - 8th Avenue
Helena, Montana 59601

ROLL CALL

EDUCATION COMMITTEE

44th LEGISLATIVE SESSION 1975

Date 3/2/75

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock, Chmn.	X		
Senator Paul F. Boylan, V. Chmn.	X		
Senator V. E. Cetrone	X		
Senator Richard A. Colberg	X		
Senator Frank Dunkle	X		
Senator Larry Fasbender	X		
Senator William L. Mathers	X		
Senator George McCallum	X		
Senator Harold C. Nelson	X		
Senator Ann Seibel	X		
Senator Margaret Warden	X		

Each day attach to minutes

After questions by the committee, the Chair closed testimony on HB 247.

FURTHER CONSIDERATION OF HOUSE BILL 301: Senator Colberg moved that HB 301 be placed in subcommittee and amended as proposed. The motion lost with Senators Blaylock, Cetrone, Dunkle, Mathers, Nelson, Seibel and Warden opposed.

Senator Fasbender moved that HB 301 be referred to Priorities Committee for consideration as an interim study bill. The motion was seconded by Senator Mathers and carried with Senator Dunkle opposed.

DISPOSITION OF HOUSE BILL 384: Senator Cetrone moved HB 384 BE CONCURRED IN. After much committee discussion, the motion carried with Senators Boylan, Mathers, McCallum and Nelson opposed. Senator Cetrone will carry HB 384 on the Senate floor.

DISPOSITION OF HOUSE BILL 308: Senator Seibel moved HB 308 BE CONCURRED IN. The motion carried unanimously. Senator Seibel will carry HB 308 on Senate floor.

DISPOSITION OF HOUSE BILL 355: Senator Seibel moved HB 355 BE CONCURRED IN. The motion carried unanimously. Senator Fasbender will carry HB 355 on the Senate floor.

DISPOSITION OF HOUSE BILL 501: Senator Warden moved HB 501 BE CONCURRED IN. The motion carried unanimously. Senator Warden will carry HB 501 on the Senate floor.

DISPOSITION OF HOUSE BILL 535: Senator Colberg moved HB 535 BE CONCURRED IN. The motion carried unanimously. Senator Colberg will carry HB 535 on the Senate floor.

DISPOSITION OF HOUSE BILL 299: The committee discussed amendments prepared by Rep. Driscoll to HB 299. A copy of these amendments attached. After much committee discussion, Senator Colberg moved the amendments be adopted, which carried unanimously. Senator Colberg moved HB 299 AND AS SO AMENDED, BE CONCURRED IN. The motion carried with Senator Boylan opposed. Senator Romney will carry HB 299 on the Senate floor.

DISPOSITION OF HOUSE BILL 71: Senator Seibel moved HB 71 BE CONCURRED IN. The motion carried unanimously. Senator Warden will carry HB 71 on the Senate floor.

DISPOSITION OF HOUSE BILL 381: Senator Warden moved HB 381 BE CONCURRED IN. The motion carried unanimously. Senator Dunkle will carry HB 381 on the Senate floor.

ADJOURN:

There being no further business, the meeting was adjourned at 1:00 p.m.

Chet Blaylock, Chairman

ROLL CALL

EDUCATION COMMITTEE

44th LEGISLATIVE SESSION 1975

Date 3/10/75

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock, Chmn.	X		
Senator Paul F. Boylan, V. Chmn.	X		
Senator V. E. Cetrone	X		
Senator Richard A. Colberg	X		
Senator Frank Dunkle	X		
Senator Larry Fasbender	X		
Senator William L. Mathers	X		
Senator George McCallum	X		
Senator Harold C. Nelson	X		
Senator Ann Seibel	X		
Senator Margaret Warden	X		

Each day attach to minutes

SENATE COMMITTEE EDUCATION

Date 3/10/75 House Bill No. 384 Time 12:10 p.m.

NAME	YES	NO
Senator Chet Blaylock, Chairman	X	
Senator Paul F. Boylan, Vice Chairman		X
Senator V. E. Cetrone	X	
Senator Richard A. Colberg	X	
Senator Frank Dunkle	X	
Senator Larry Fasbender	X	
Senator William L. Mathers		X
Senator George McCallum		X
Senator Harold C. Nelson		X
Senator Ann Seibel	X	
Senator Margaret S. Warden	X	

Lynn Hiatt
Secretary

Chet Blaylock
Chairman

Motion: Sen. Cetrone moved bill Be Concurred In. Motion carried

(include enough information on motion--put with yellow copy of committee report.)

HOUSE BILL NO. 384

INTRODUCED BY SCULLY, GILLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION 75-6105.1, R.C.M. 1947, TO PROVIDE UPON REQUEST A STATEMENT OF REASONS ~~AND HEARING BEFORE THE TRUSTEES~~ ON TERMINATION OF EMPLOYMENT OF A PUBLIC SCHOOL TEACHER."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-6105.1, R.C.M. 1947, is amended to read as follows:

"75-6105.1. Notification of nontenure teacher re-election. (1) The trustees shall provide written notice to all nontenure teachers who have been re-elected by the first day of April. Any nontenure teacher who does not receive notice of re-election or termination shall be automatically re-elected for the ensuing school fiscal year. Any nontenure teacher who receives notification of his re-election for the ensuing school fiscal year shall provide the trustees with his written acceptance of the conditions of such re-election within twenty (20) days after the receipt of the notice of re-election. Failure to so notify the trustees within twenty (20) days may be considered nonacceptance of the tendered position. The provisions of this section shall not apply to cases in which a nontenure teacher is terminated when the financial condition of the school district requires a reduction in the number of teachers employed and the reason for the termination is to reduce the number of teachers employed.

(2) When the trustees notify a nontenure teacher of termination, the teacher may within ten (10) days after receipt of such notice make written request of the trustees for a statement in writing of the reasons for termination of employment. Within ten (10) days after receipt of the request the trustees shall furnish such statement to the teacher."

-End-

REFERENCE BILL